

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rules of
the Department of Natural Resources
Relating to Falconry

**ORDER ON
REVIEW OF RULES
UNDER MINNESOTA STATUTES,
SECTION 14.26**

The Department of Natural Resources (DNR) is seeking review and approval of Minnesota Rules parts 6238.1200, 6238.1250, 6238.1300, 6238.1350, 6238.1400, 6238.1450, 6238.1500, 6238.1550, 6238.1600, 6238.1650, 6238.1700, and 6238.1750, without a hearing. This review and approval is governed by Minn. Stat. § 14.26. On July 18, 2013, the Office of Administrative Hearings (OAH) received the documents that must be filed by the DNR under Minn. Stat. § 14.26 and Minn. R. 1400.2310.

Based upon a review of the written submissions and filings, and for the reasons set forth in the attached Memorandum,

IT IS HEREBY ORDERED:

1. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
2. The rules are **APPROVED**.
3. The DNR should consider making the technical changes set forth in the attached memorandum.

Dated: July 31, 2013

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

The Board has submitted these rules to the Administrative Law Judge (ALJ) for review under Minn. Stat. § 14.26. Subdivision 3(a) of that statute specifies that the ALJ must approve or disapprove the rules as to their legality and form. In conducting the review, the ALJ must consider the issue of whether the agency has the authority to adopt the rules; whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules; and whether the rules as modified are substantially different from the rules as originally proposed. Based on a review of the written submissions and filings, the Administrative Law Judge concludes that the rules comply with the applicable legal requirements.

The Administrative Law Judge recommends, however, that the agency make a few language changes to clarify or improve readability of the proposed rules. These wordings changes are merely suggestions and do not denote defects in the proposed rules. The proposed changes are set forth below.

A. Minnesota Rule 6238.1200, Subpart 8 – “Falconry permit” definition

As proposed, Minnesota Rule 6238.1200, Subpart 8 provides:

“Falconry permit” means a permit issued under part 6238.1250, subpart 2, for residents and for nonresidents who practice falconry in Minnesota for more than 120 days within a given year to take, possess, transport, transfer, use, sell, purchase, or barter raptors or offer to sell, purchase, or barter raptors.

The proposed language refers to Minnesota Rule 6238.1250, Subpart 2, which sets forth “Resident falconry permit requirements.” A separate subpart, Subpart 3, sets forth the permit requirements applicable to nonresidents. To clarify that Subpart 3, not Subpart 2, applies to nonresidents, the Administrative Law Judge recommends adding a reference to Subpart 3 before the word “nonresidents.” The recommended amended language would read as follows:

“Falconry permit” means a permit issued under part 6238.1250, subpart 2, for residents and, under part 6238.1250, subpart 3, for nonresidents who practice falconry in Minnesota for more than 120 days within a given year to take, possess, transport, transfer, use, sell, purchase, or barter raptors or offer to sell, purchase, or barter raptors.

B. Minnesota Rule 6238.1250, Subpart 1(C) – State and Federal Regulations

As proposed, Minnesota Rule 6238.1250, Subpart 1(C) provides in relevant part:

All persons conducting activities under subparts 2 to 6 must comply with all applicable provisions of this chapter and federal regulations. Permits issued under this chapter shall include:

....

(C) other restrictions the commissioner deems necessary for public health and safety and for the welfare of raptors described in this chapter.

The Administrative Law Judge recommends that the language “the commissioner deems necessary” be deleted. The deletion of this language would clarify that the standard allows restrictions that are necessary to protect public health and safety, and ensure that the determination is objective, not subjective.

C. Minnesota Rule 6238.1350(E)(1)

As proposed, Minnesota Rule 6238.1350(E)(1) provides:

A propagation permittee: (1) must meet the minimum qualifications under part 6238.1300, subpart 2, and must comply with all applicable provisions in this chapter and associated federal regulations under Code of Federal Regulations, title 50, sections 21.29 and 21.30;

The Administrative Law Judge recommends that the language “under Code of Federal Regulations, title 50, sections 21.29 and 21.30” be deleted because the term “federal regulations” is already defined in proposed Minnesota Rule 6238.1200, Subpart 9 to mean “Code of Federal Regulations, title 50, sections 21.29 and 21.30.” Thus, the additional language specifying the Code of Federal Regulations sections is repetitive and unnecessary. Also, deletion of this language would make the reference to “federal regulations” consistent with the use of the term in other parts of the proposed rules.

The recommended amended language would read as follows:

“A propagation permittee: (1) must meet the minimum qualifications under part 6238.1300, subpart 2, and must comply with all applicable provisions in this chapter and associated federal regulations;”

J. M. C.